

Want control at the end of your life? Here's what you need

BY Bonnie Lawrence, Family Caregiver Alliance April 10, 2015 at 12:12 PM EDT

Who speaks for you if you are not able to speak for yourself? Who determines what kind of care you want at the end of life, how your finances are handled, how your estate will be distributed? You do ... but only IF you've prepared ahead of time. Below, we outline the types of documents that are needed to ensure that your wishes are respected.

The documents are fairly straightforward, yet many people postpone taking action to complete them. It isn't easy to think about your own incapacity or death. But these important legal and health care decisions not only protect your own interests, they protect your family and loved ones by clarifying the kinds of care you would like to receive if you are seriously ill. After completing the legal paperwork, the next very important step is to sit down and talk with your family about the decisions you've made and why.

Advance Health Care Directive (AHCD)

What it does: This gives power to a person you designate to make health care decisions for you, ONLY IF you can't speak for yourself.

- Written instructions about your health care, also called Living Will, Durable Power of Attorney for Health Care or Health Care Proxy.
- Saves your family from having to make very difficult decisions about your care in times of grief or crisis.
- Often used to decide about the use of feeding tubes, ventilators, pain management, organ donation and other issues when someone is unconscious or at the end of life.
- Each state has slightly different versions of the form, but a form from one state will be honored in another state.
- Hospitals and most doctors' offices will provide you with the form upon request.
- Everyone over 18 should have one.
- Must be completed while you are competent to know what you are signing, i.e., without dementia.
- Only needs to be witnessed; does not need to be notarized.
- You can change your directive at any time by completing a new form.

What happens if you don't have an Advance Health Care Directive?

- Doctors will do everything to treat your condition and keep you alive, even at the end of your life.
 - Family will be asked what to do.
 - If your family does not know what your wishes are, there might be conflict and guilt over making the wrong decision.
 - Physician training, hospital and nursing home policies often dictate the use of "heroic means" to sustain life. "Reviving" a very ill person after a stroke or using a respirator for someone deemed medically "brain dead" are standard procedures in many hospitals.
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POLST

What it does: Stands for Physicians Orders for Life Sustaining Treatment and replaces DNR (Do Not Resuscitate).

- In effect in some, but not all, states. Find your state [here](#).
- The doctor completes this form based on your wishes or directives if you have been diagnosed with a life-threatening illness.
- Since it is a physician's order, it is not open to the will of others.
- It is helpful if you do not want 911 Emergency Responders to perform CPR (Cardio-Pulmonary Resuscitation) and expands on other treatments you might or might not want.
- Can be changed or cancelled if you so wish and if you are competent to decide.

What happens if you don't have a POLST?

- If 911 is called, EMTs are required to do everything possible to resuscitate a person and keep him/her alive until they arrive at the hospital.
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Durable Power of Attorney for Finances

What it does: Allows someone to access your finances, e.g., checking account, investments or property in order to pay your bills.

- A Durable Power of Attorney is valid even if you are incapacitated.
- Must be completed while you are competent to know what you are signing, i.e., without dementia.
- The person chosen needs to be someone you trust, as this person has control over your finances. If you don't have someone you trust, you should consult a professional.
- Spouses might not have access to all funds unless everything, including investments, is held as joint property.

What happens if you don't have a Power of Attorney for Finances?

- If you don't have a Durable Power of Attorney for Finances and you can't manage your finances, a judge will have to appoint someone to do so. It may mean you will have to be conserved, that is, someone will be appointed by the court to oversee your care and finances.
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Will

What it does: Says how you want your estate (money and belongings) to be dispersed to family, friends, organizations, etc. after you die.

- Also called Last Will and Testament.
- Each state has different laws about estates, but most states will honor an out-of-state will.
- Can be hand-written or completed using online forms, but final version must be witnessed and/or notarized.
- If your estate is complicated or worth more than \$100,000, it is best to have an attorney help you write the will or review what you wrote. There are [online forms](#) to guide you.
- Must be completed while you are competent to know what you are signing, i.e., without dementia.
- In a will, you appoint someone to be the executor or administrator who will pay your final bills and see that your wishes are carried out. You can also appoint a guardian for your minor children.

- Probate is the transferring of property when someone dies. The probate court oversees the executor to assure that the estate is divided as stated in the will.

What happens if you don't have a will?

- If you die without a will, the court will probate your estate. The laws of your state will determine who inherits your property.
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Trusts

What it does: A trust creates a legal entity that holds your assets for you so that your estate does not have to go through probate when you die.

- Also called a Living Trust.
- You name a trustee to oversee the trust both while you are alive and to distribute the trust to beneficiaries when you die.
- You may be the trustee of the trust while you are alive, in which case you name a successor trustee for the trust. This person manages the trust after you die or become incapacitated.
- A Revocable Trust allows you to control everything that happens in the trust while you are alive.
- An Irrevocable Trust cannot be changed without the beneficiary's consent.

There are many options for trusts for specific purposes, such as:

- Special Needs Trusts — puts money aside to help someone who is disabled.
- Charitable Trust — for money given to a charity.
- Bypass Trust — Irrevocable Trust passes assets to the spouse and then the children at death of second parent, limiting estate taxes.
- Life Insurance Trust — removes life insurance from estate and thus estate taxes.
- Generation Skipping Trust — allows grandchildren to directly inherit without paying taxes.

What happens if you don't have a trust?

- Depending on the value of your assets, your estate will go through probate, which can take several months and incur costs.
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Final Arrangements

What it does: Specifies what you would like to happen after your death — whether you would like cremation or burial — and lets the family know. Also lets loved ones know your wishes regarding organ donation and other special arrangements.

- Puts your wishes in writing in a place family members can find them.
- The more decisions you make beforehand, the fewer decisions family has to make during a difficult time when they are grieving.

What happens if you don't make your wishes known about final arrangements?

- Family can often be in conflict about what you would have wanted.

- The law can determine who has the power to make the decision if it is unclear or there is conflict.
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Beneficiary Forms

Bank accounts, investments, insurance, and retirement plans can be designated as “payable on death” to a named beneficiary, which means the funds don’t have to go through probate.

- Allows access to funds immediately, rather than waiting for probate to close.
- There may be special rules for retirement accounts.

What happens if you haven’t named a beneficiary for funds “payable on death”?

- Unless funds are in a trust, the estate must be probated through the court, which can take several months (when the funds might not be available) and incur costs.
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Where to Find My Important Papers

Have a central place for wills, trusts, powers of attorney, etc., or a document describing where they are so family members will know where to find these items.

- Include information about your Social Security number, safe deposit box, birth certificate, life insurance, contact information for attorney, and other important details.

What happens if you don’t have a central place?

- If you’re seriously ill, your family is likely to be stressed and disorganized. Having a central place for documents, or a list describing where they are, will reduce the possibility of forms being misplaced or lost and will help your family cope with the crisis.
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More Information & Resources

Residential care:

[Online listings by geographic area](#)

Mayo Clinic

[Consumer Health: Living Wills and Advance Directives](#)

Consumer Reports

[What to do when a loved one dies](#)

National Association of Area Agencies on Aging

[Having the Conversation about Health, Legal, Financial and End-of-Life Issues](#)

American Bar Association (ABA)

[Commission on Legal Problems of the Elderly](#)

Washington, DC 20036

(202) 662-8690

Consumer's Toolkit for Health Care Advance Planning

Compassion & Choices

PO Box 101810

Denver, CO 80250-1810

(800) 247-7421

www.compassionandchoices.org

National Academy of Elder Law Attorneys

1577 Spring Hill Rd., Suite 220

Vienna, VA 22182

(703) 942-5711

www.naela.com

National Hospice and Palliative Care Organization

1700 Diagonal Rd. Suite 625

Alexandria, VA 22314

(703) 837-1500

www.nhpco.org

Long-Term Care Options Explored on PBS NewsHour:

- Why home care workers struggle with low wages
- Teens and elders bridge gap and digital divide
- Why more seniors are going back to college — to retire
- Coping with Alzheimer's: A mother and daughter portrait of long-term care
- Taking cues from 'Golden Girls,' more single baby boomers are building a future together
- There's no place like home: seniors hold on to urban independence into old age
- Foster families find and share support with elders at Oregon housing community

More Helpful Publications from Family Caregiver Alliance:

- Advanced Illness: Holding on and Letting Go
- Downsizing a Home: A Checklist for Caregivers
- Legal Issues for LGBT Caregivers

About Family Caregiver Alliance

Family Caregiver Alliance

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Family Caregiver Alliance (FCA) offers an extensive online library of free educational materials for caregivers. The publications, webinars and videos offer families the kind of straightforward, practical help they need as they care for relatives with chronic or disabling health conditions.

Family Care Navigator is FCA's online directory of resources for caregivers in all 50 states. It includes information on government health and disability programs, legal resources, disease-specific organizations and more.

- Bonnie Lawrence, Family Caregiver Alliance

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